

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On August 25, 2017 appellant, then an 47-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced stress and depression causally related to factors of her federal employment. She became aware of her condition and its relationship to her federal employment on June 21, 2016. Appellant stopped work on April 15, 2017.

By decision dated November 30, 2017, OWCP denied appellant's emotional condition claim. It found that she had not specifically described the work factors to which she attributed her stress, and thus, had not factually established her claim. OWCP further noted that appellant had not submitted medical evidence supporting a diagnosed condition resulting from her employment.

Appellant, on July 2, 2018, requested reconsideration. She submitted two pages of the November 30, 2017 OWCP decision. Appellant advised that she had attached a description of the implicated employment incidents and supporting medical evidence. OWCP, however, did not receive any additional evidence with the reconsideration request.

By decision dated July 9, 2018, OWCP denied appellant's request for reconsideration as she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128(a). It noted that she had not submitted any evidence with her reconsideration request other than part of its November 30, 2017 decision.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.³ The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one

³ 5 U.S.C. § 8128(a).

⁴ *Id.*

⁵ 20 C.F.R. § 10.606(b)(3); *see also* *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also* *M.S.*, Docket No. 18-1041 (issued October 25, 2018).

of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

By decision dated November 30, 2017, OWCP denied appellant's emotional condition claim as she had not sufficiently identified the employment factors to which she attributed her condition, and thus, failed to factually establish her claim. On July 2, 2018 appellant requested reconsideration.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. As such, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).⁹

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. With her reconsideration request, appellant submitted two pages of OWCP's November 30, 2017 decision. The Board has held that the submission of evidence that duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.¹⁰ As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under section 10.606(b)(3).¹¹

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹²

On appeal appellant contends that OWCP did not receive the correct documents in support of her claim.¹³ She raises argument relevant to the merits of her claim. The only issue before the Board, however, is whether OWCP properly denied her request for reconsideration of the merits of the claim, and thus, these arguments are not before the Board at this time.¹⁴

⁸ *Id.* at § 10.608(b); *K.S.*, Docket No. 18-1022 (issued October 24, 2018).

⁹ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁰ *See A.M.*, Docket No. 18-0716 (issued December 10, 2018).

¹¹ *R.L.*, Docket No. 18-0175 (issued September 5, 2018).

¹² *See L.A.*, Docket No. 18-1226 (issue December 28, 2018) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

¹³ As noted, the Board has no jurisdiction to review the additional evidence submitted by appellant with her appeal. *Supra* note 2.

¹⁴ *H.W.*, Docket No. 18-1175 (issued December 6, 2018).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2019
Washington, D

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board